UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 200 P.O. BOX 1219 **SANDY UT 84070**

COPY MAILED

OCT 1 8 2005

OFFICE OF PETITIONS

In re Application of

David FIKSTAD et al.

Application No. 10/700,838

Filed: November 3, 2003

Attorney Docket No. 23625

: DECISION DISMISSING PETITION

: UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 3, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional applications set forth in the concurrently filed amendment.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. § 120 and 37 CFR **(1)** 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- the surcharge set forth in § 1.17(t); and **(2)**
- a statement that the entire delay between the date the **(3)** claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment submitted concurrently with the petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in

Application No. 10/700,838

a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

In view of the above, the petition is **DISMISSED**.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).¹

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Any questions concerning this matter may be directed to David Bucci at (571) 272-7099.

Brian Hearn

Petitions Examiner
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

RECEIVED CENTRAL FAX CENTER

OCT 0 3 2005

Patent App. SN: 10/700,838 Attorney Docket No. 23625

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:

Fikstad et al.

SERIAL NO.:

10/700,838

FILED:

November 3, 2003

FOR:

PHARMACE JTICAL COMPOSITIONS WITH

SYNCHRONIZED SOLUBILIZER

RELEASE

ART UNIT:

1614

EXAMINER:

Royds, L.

DOCKET NO.:

23625

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify under 37 CFR § 1.8 that this correspondence is being facaimile transmitted to the USPTO or being deposited with the United States Postal Service with sufficient postage as first class postage in an envelope addressed to Commissioner of Patents Alexandria, VA 22313 on the date indicated below.

Λ......

Judy Anderson

10/3/2005

Date of Deposit

PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR THE BENEFIT OF A PRIOR-FILED APPLICATION UNDER 37 C.F.R. § 1.78(a)(3)

Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Dear Sir:

This is a petition to correct a claim for the benefit of a prior-filed patent application pursuant to 37 C.F.R. 1.78(a)(3), and in accordance with the fees set forth in 37 C.F.R. 1.17(1).

Page 1 of 3